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FOUNDED 1866

April 18, 2013

BY E-MAIL

The Honorable Paul A. Engelmayer
United States District Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *Chesapeake Energy Corporation v. The Bank of New York Mellon Trust Company, N.A.*, No. 13 cv 1582 (PAE)

Dear Judge Engelmayer:

We represent defendant The Bank of New York Mellon Trust Company, N.A. ("BNY Mellon"). We write briefly concerning the decision of the plaintiff, Chesapeake Energy Corporation ("Chesapeake"), to designate entire deposition transcripts and exhibits as purportedly "Confidential" pursuant to the Stipulated Protective Order. Such blanket designations of deposition transcripts and exhibits are inappropriate under Paragraph 4 of the Stipulated Protective Order, which provides that:

With respect to deposition transcripts and exhibits, a producing person or that person's counsel may indicate on the record that *a question* calls for Confidential or Highly Confidential information, in which case the transcript of the designated testimony shall be bound in a separate volume and marked "Confidential Information Governed by Protective Order" or "Highly Confidential Information Governed by Protective Order," as applicable, by the reporter. (Emphasis added.)

As a practical matter, Chesapeake's overbroad confidentiality designations will force BNY Mellon to request that significant portions of future filings—including BNY Mellon's upcoming pretrial brief and deposition designations—be made under seal. At this point in time, we have no way of knowing what particular information Chesapeake maintains is "Confidential."



The Honorable Paul A. Engelmayer
April 18, 2013

Page 2

Chesapeake has refused to provide specific confidentiality designations with respect to various deposition transcripts and exhibits as required by the Stipulated Protective Order, even though BNY Mellon first asked counsel for Chesapeake to review and revise its blanket confidentiality designations on April 14, 2013. On a meet and confer call this afternoon, in fact, counsel for Chesapeake sought to shift its burden of providing accurate confidentiality designations to BNY Mellon. On that call, Chesapeake proposed to send BNY Mellon a list of "Confidential" deposition exhibits by 4 p.m. tomorrow, and stated that BNY Mellon could then treat any deposition transcripts *not* relating to those exhibits as presumptively public documents. Chesapeake again refused to designate specific portions of deposition transcripts and exhibits as "Confidential," however, and raised the possibility that Chesapeake may even re-designate as "Confidential" any portions of the deposition transcripts and exhibits that BNY Mellon ultimately proposes to admit as evidence at the trial in this matter. Chesapeake's proposal not only would perpetuate its noncompliance with the Stipulated Protective Order, but is manifestly and unduly burdensome to BNY Mellon.

We respectfully request that, in order to allow BNY Mellon to prepare its pretrial filings and comply with its obligations under the terms of the Stipulated Protective Order, the Court direct Chesapeake to provide particularized confidentiality designations by the close of business tomorrow, April 19.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven M. Bierman".

Steven M. Bierman

cc: Counsel of Record (*by e-mail*)